

**EXHIBIT 3**

**Deposition of  
ROGER CLARK**

**DAY v. COUNTY OF CONTRA COSTA**

*Taken On  
July 31, 2008*

Transcript provided by:

**HUTCHINGS<sup>SM</sup>**  
**COURT REPORTERS, LLC**  
CSR 649

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1 20/20 hindsight to his judgment, are you not?

2 MR. COOK: Objection. Argumentative. Calls for a  
3 legal opinion. You can answer.

4 THE WITNESS: No. That was not the way I looked  
5 at the case, nor was it the way I believe I wrote the  
6 case and the opinion.

7 Clearly Patzer cannot be held to what finally  
8 develops at the end of the day.

9 He can only be held responsible for what he knew  
10 at the time and evaluated on that basis.

11 And I believe that's exactly what I did in the  
12 report.

13 Now, in regard to chasing -- deciding to chase  
14 Day, that decision is not -- I didn't render that  
15 decision in terms of 20/20 hindsight. They should  
16 never had done it.

17 I rendered that decision based on the fact that at  
18 that time, and under those circumstances with those  
19 sets of facts, no officer would separate from his  
20 partner and chase an individual who is fleeing when  
21 there are two other suspects in a suspected stolen car;  
22 you know, leave that and chase the one; leave two to  
23 chase one. It's never done -- and engage in that by  
24 himself.

25 And I talk about it as terms of a muscle memory

1 decision; not a hindsight thing but a muscle memory  
2 decision.

3 He would have decided that and have been trained  
4 in that before he even got out of the Academy at the  
5 basic level and would never be expected to do it.

6 MR. FITZGERALD:

7 Q. Is it your opinion, based on your expertise,  
8 that his decision to do what you just described  
9 constituted an unconstitutional act on his part?

10 A. Well, you are asking me a legal question.

11 MR. COOK: Objection. The question calls for a  
12 legal opinion. Constitutional law.

13 THE WITNESS: I think it's -- and I think I  
14 expressed it well enough in the report -- hopefully I  
15 have -- that it is so -- this is such an extreme and  
16 reckless departure from a fundamental rule of tactics,  
17 that it can only be viewed as a deliberate act, not  
18 accidental.

19 And it has to be viewed in that category  
20 because -- and putting -- and it put everyone at risk.

21 And of course we know what the outcome is. That's  
22 the 20/20 hindsight. We know what the outcome is.

23 But what he did, that decision is just stunning in  
24 my opinion. I can't overstate it.

25 MR. FITZGERALD:

1 Q. When you use the word "deliberate" what do you  
2 mean?

3 A. I mean that having -- knowing what he was  
4 trained in, and probably having the document that has  
5 the pages that he looked at in his class -- I would be  
6 surprised if they were any different at all -- that for  
7 an officer to decide to disregard that training and  
8 engage in a solo foot pursuit, has to have fallen in  
9 the category of a deliberate decision.

10 Q. What evidence can you point to in the record  
11 that suggests that Officer Patzer made a deliberate  
12 decision to disregard that training?

13 A. Well, now there's an interesting issue  
14 because -- and I have criticized it -- the  
15 investigation never asked him the question.

16 I looked and I could not find what the overriding  
17 decision -- the question would be by any reasonably  
18 trained investigator, "Patzer, what made you decide to  
19 leave your partner and go after Mr. Day?" Or go after  
20 this little guy, under these circumstances especially,  
21 and it was never asked.

22 Q. Since you brought it up, --

23 A. Sure.

24 Q. -- you reviewed Deputy Patzer's deposition,  
25 did you not?

1 quote. Did I read that correctly?

2 A. Yes. That's probably the biggest of all of  
3 them.

4 Q. So you are saying that was a fatal error?

5 A. That it was a fatal error.

6 Q. And the fact that Patzer pursued Mr. Day by  
7 himself was an unconstitutional act?

8 MR. COOK: Objection. Calls for speculation.  
9 Lacks foundation. Calls for a legal opinion. Beyond  
10 the scope of what this witness is qualified for.

11 MR. FITZGERALD:

12 Q. In your opinion when he chased him alone, did  
13 that violate Mr. Day's constitutional rights?

14 MR. COOK: Same objections.

15 THE WITNESS: I don't think I was hired to say or  
16 to opine on the constitutional rights, whether they  
17 were violated.

18 But where I am competent is that if a person does  
19 something so far out of the norm, that that leads to --  
20 and that that starts a series of events, that there's a  
21 responsibility there.

22 That's what I'm now -- how that fits into the  
23 constitutional question you are asking me, I don't  
24 think I can answer in terms of being qualified to  
25 answer that kind of question.

1 I, Stephanie Ann Riggs, CSR 12788, RPR, do hereby  
2 declare:

3 That, prior to being examined, the witness named in  
4 the foregoing deposition was by me duly sworn pursuant  
5 to Section 30(f) (1) of the Federal Rules of Civil  
6 Procedure and the deposition is a true record of the  
7 testimony given by the witness.

8 That said deposition was taken down by me in  
9 shorthand at the time and place therein named and  
10 thereafter reduced to text under my direction.

11 That the witness was requested to review  
12 the transcript and make any changes to the  
13 transcript as a result of that review  
14 pursuant to Section 30 (e) of the Federal  
15 Rules of Civil Procedure.

16 No changes have been provided by the witness  
17 during the period allowed.

18 The changes made by the witness are appended  
19 to the transcript.

20 ~~X~~ No request was made that the transcript be  
21 reviewed pursuant to Section 30 (e) of the  
22 Federal Rules of Civil Procedure.

23 I further declare that I have no interest in the  
24 event of the action.

25 I declare under penalty of perjury under the laws  
of the United States of America that the foregoing is  
true and correct.

WITNESS my hand this 6th day of

August

2008

Stephanie A. Riggs  
Stephanie Ann Riggs, CSR 12788, RPR

